

## Farm Credit Administration

## §615.5250

the type or types of agriculture engaged in by each director on its board.

[53 FR 40046, Oct. 13, 1988, as amended at 54 FR 6118, Feb. 8, 1989; 60 FR 57921, Nov. 24, 1995; 62 FR 4446, Jan. 30, 1997; 62 FR 49908, Sept. 24, 1997; 63 FR 39228, July 22, 1998]

### §615.5240 Permanent capital requirements.

(a) The capitalization bylaws shall enable the institution to meet the minimum permanent capital adequacy standards established under subparts H and K of this part and the total capital requirements established by the board of directors of the institution.

(b) In order to qualify as permanent capital, equities issued under the bylaws must meet the following requirements:

(1) For common stock and participation certificates—

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain or upon the happening of any event, such as repayment of the loan, and not pursuant to any automatic retirement or revolvement plan;

(ii) Retirement must be at not more than book value;

(iii) Disclosure must have been made pursuant to §615.5250 of the nature of the investment and the terms and conditions under which it is issued, and the rights, if any, to share in any patronage distributions that may be made.

(iv) Dividends must be payable only at the discretion of the board and must be noncumulative.

(2) For perpetual preferred stock issued to persons other than the Farm Credit System Financial Assistance Corporation:

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain or upon the happening of any event, such as repayment of the loan, and not pursuant to any automatic retirement or revolvement plan;

(ii) Retirement must be at not more than book value;

(iii) Dividends must be payable only in the discretion of the board, and may be cumulative; and

(iv) Disclosure must have been made pursuant to §615.5250 of the nature of

the investment and the terms and conditions under which it is issued.

(3) For term preferred stock:

(i) Retirement must be solely at the discretion of the board of directors and not upon a date certain, other than the original maturity date, or upon the happening of any event, such as repayment of the loan;

(ii) Retirement must be at not more than book value;

(iii) Dividends may be cumulative, but the board of directors must have the option to defer payment; and

(iv) Disclosure must have been made pursuant to §615.5250 of the nature of the investment and the terms and conditions under which it is issued.

(c) Once an institution's board of directors has made a determination that the institution's capital position is adequate, the institution's board of directors may delegate to management the decision whether to retire borrower stock, provided that:

(1) Any such retirements are in accordance with the institution's capital adequacy plan or capital restoration plan;

(2) The institution's permanent capital ratio will be in excess of 9 percent after any such retirements;

(3) The institution meets and maintains all applicable minimum surplus and collateral standards; and

(4) The aggregate amount of stock purchases, retirements, and the net effect of such activities are reported to the board of directors each quarter.

[53 FR 40046, Oct. 13, 1988, as amended at 62 FR 4446, Jan. 30, 1997]

### §615.5250 Disclosure requirements.

(a) Equities purchased as a condition for obtaining a loan. Prior to loan closing, the institution shall provide the prospective borrower with the following:

(1) The institution's most recent annual report filed under 12 CFR part 620;

(2) The institution's most recent quarterly report filed under 12 CFR part 620, if more recent than the annual report;

(3) A copy of the institution's capitalization bylaws; and

(4) A written description of the terms and conditions under which the equity is issued. In addition to specific terms